

JAN 28 2020

DEPT OF PARKS & LAND USE

STATE OF WISCONSIN

TOWN OF WAUKESHA

WAUKESHA COUNTY

ORDINANCE NO. 2020-01

AN ORDINANCE TO REPEAL AND RE-CREATE SECTIONS 42-35, 42-44, 42-83, 42-84, 42-85, 42-86, 42-87, 42-88, 42-89, 42-90, 42-91, 42-92, 42-93, 42-94 AND 42-95 RELATED TO CONDITIONAL USES IN THE TOWN OF WAUKESHA ZONING CODE

WHEREAS, on November 27, 2017, the State of Wisconsin enacted 2017 Wisconsin Act 67 related to requiring a political subdivision to issue a conditional use permit under certain circumstances which resulted in requiring substantial evidence, rather than personal preferences or speculation directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit; and

WHEREAS, the Town Board has determined that the current standards within the Town Code do not provide the Town with adequate information to evaluate the Conditional Use request under the "substantial evidence" standard and under this new standard many uses previously considered as conditional uses are no longer appropriately categorized as such and should be repealed; and

WHEREAS, the Town Board duly referred the matter to the Town Plan Commission for report and recommendation; and

WHEREAS, upon publication of a Class 2 Notice per Chapter 985 Wisconsin Statutes once each week for two consecutive weeks prior to the hearing, and upon at least 10 days prior written notice to the clerk of any municipality whose boundaries are within 1,000 feet of any lands included in the proposed Zoning Code territory as required by Wisconsin Statutes Section 62.23(7)(d), the Town Board held a public hearing regarding the tentative recommendation, on January 9, 2020; and

WHEREAS, the Plan Commission has recommended the ordinance be adopted; and

WHEREAS, the Town Board finds that this change to the Town Zoning Code is not a down zoning ordinance because it does not decrease the development density of land and it does not reduce the permitted uses of land, and therefore the super majority requirement of Section 66.10015, Wisconsin Statutes, does not apply to this ordinance; and

WHEREAS, the Town of Waukesha Town Board has previously voted to repeal all of Section 42-35 in order to allow time to resolve this Code amendment process, but that ordinance could not take effect unless and until it was approved by the Waukesha County Board and the Waukesha County Board has not acted upon that ordinance and it has not taken effect, and that previously proposed ordinance is hereby rendered null and void by the adoption of this ordinance; and

WHEREAS, having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such zoning amendments on the health, safety and welfare of the community, and the immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved as well as the impact on the surrounding properties as to noise, dust, smoke and odor, and others, hereby

determine that the zoning amendments will not violate the spirit or intent of the Zoning Code for the Town of Waukesha, will not be contrary to the public health, safety or general welfare of the Town of Waukesha, will not be hazardous, harmful, noxious, offensive and will not for any other reason cause a substantial adverse effect on the property values and general desirability of the neighborhoods within the Town, and will be consistent with the Town of Waukesha Comprehensive Plan.

NOW THEREFORE, the Town Board for the Town of Waukesha, Waukesha County, Wisconsin does hereby ordain as follows:

SECTION 1: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article II entitled, "General Provisions," Section 42-35 entitled "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-35. - Conditional uses.

Certain uses and situations are of such a special nature or are so dependent upon actual contemporary circumstances that it is impractical to predetermine the permissibility of such uses or to detail in this chapter all of the specific standards, regulations or conditions which would permit such uses in each individual situation. Such uses may, however, be permitted as conditional uses. The applicant for a conditional use must demonstrate that the application and all requirements and conditions established by the Town relating to the conditional use are, or shall be satisfied, both of which must be supported by substantial evidence. The Town's decision to approve or deny any such conditional use permit will be based upon substantial evidence presented at a public hearing. Only those uses specifically listed herein can be granted a conditional use. Any other uses not specifically listed shall require an amendment to this code to be considered by the Plan Commission and Town Board. (1) *Application*. Application for a conditional use permit shall be made on forms furnished by the Town and submitted to the town clerk-treasurer, setting forth the proposal, and shall include the following where pertinent and necessary for adequate review:

- a. A plat of survey with topographic information, drawn to scale of not less than 200 feet to one inch by a registered land surveyor showing the land in question, its legal description and location, location and use of existing buildings, sanitary systems and private water supplies on such land; the high water elevation of any navigable waters within 100 feet of the land in question, and the proposed location and use of any buildings, sanitary systems and wells on such land and within 300 feet of such land in question and any and all information listed in Sec. 42-30 – Site Plan and Plan of Operation Review.
- b. The names and addresses of all owners of property within 300 feet of any part of the land included in the proposed change.
- c. Additional information as may be required by the town.
- d. A fee, to be established by resolution, shall be payable to the town clerk-treasurer to defray the cost of official notification of public hearing. Costs incurred in obtaining legal, planning, engineering and other technical and professional advice in connection with

the review of conditional use applications and preparation of conditions to be imposed on such uses shall be charged/paid by the applicant.

- e. Where necessary, to comply with certain state statutes, an application will be submitted to the department of natural resources.

(2) *Review and approval.* The Plan Commission and Town Board shall review the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, sewerage and water systems, the proposed operation, and other factors the Plan Commission and Town Board determines are appropriate when considering a Conditional Use Permit.

a. Process.

1. The Applicant shall meet with the Town Zoning Administrator in a pre-application conference to discuss the application, plans and requirements.
2. The Applicant applies for a Conditional Use Permit by completing the Town application and all required information. If the application is complete as determined by the Town Administrator or designee, the Administrator sets the public hearing date. If the application is incomplete, the Petitioner is notified of the deficiencies and the application is returned to the Petitioner.
3. Joint Public Hearing before the Plan Commission and Town Board:
 - (i) Refer to Sec. 42-49.
 - (ii) Any person may appear in person, by agent, or attorney.
 - (iii) The Plan Commission and Town Board shall afford the applicant and each interested person opportunity to present evidence to rebut or offer countervailing evidence.
 - (iv) The Plan Commission and Town Board shall take minutes of the proceedings and shall mark and preserve all exhibits.
 - (v) At the joint public hearing, the Plan Commission and Town Board will hear from the applicant, Town, and the public on the application's compliance with the standards of the Code. The purpose of the hearing is to gather the record, for the Petitioner to prove with substantial evidence they meet the standards of the code or the public to prove they do not. During the hearing, concerns from the public, Plan Commission, and/or Town Board shall also be addressed. Only substantial evidence may be considered by the Plan Commission and Town Board. At the summation of the initial public hearing date, the Plan Commission and Town Board may take the following action:
 - A. Direct the Petitioner and public to address any remaining questions and standards to be considered at an adjourned public hearing date.

- B. Require additional appropriate conditions to be included in the Conditional Use Order. The Petitioner will need to prove they can meet those at the adjourned public hearing date.
 - C. Approve the requested conditional use and direct staff to prepare the Conditional Use Order or find that the Petitioner does not meet the standards for approval for consideration at the next meeting. The Plan Commission and Town Board may also delay either of these directions to hear more evidence at the next meeting, although such delay will result in another adjourned public hearing date for due process purposes.
 - D. Adjourn the public hearing to a date certain.
- (vi) At the adjourned public hearing date, if the public hearing was extended for additional evidence collection, the Plan Commission and Town Board will hear from the applicant, Town, and the public on evidence in support or opposition to items needing further consideration and to the Conditional Use Order itself. The purpose of the hearing is to gather the record on any additional standards imposed by the Plan Commission and Town Board from the first public hearing and to gather evidence on the Conditional Use Order itself. Only substantial evidence will be considered by the Plan Commission and Town Board. At the summation of the public hearing the Plan Commission and Town Board will give direction requesting additional evidence and adjourn the public hearing to a date certain or close the public hearing.
 - (vii) After the closing of the public hearing, the Plan Commission and Town Board during its regular meeting or at a subsequent meeting where the agenda item is duly noticed, shall discuss the plans and Conditional Use Order or Findings for Denial and act on the agenda item(s). The decision shall be based upon the record from the public hearing(s). The burden of proof is on the applicant to prove they have met the standards of the Ordinance and those set forth by the Plan Commission and Town Board during the process. The Plan Commission and Town Board shall render its written determination and the reasons for the same in a timely manner following the public hearing. The Clerk shall mail a copy of the determination to the applicant.
 - (viii) Conditions such as landscaping, architectural design, type of construction, flood proofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, parking requirements, or length of approval may be required by the Plan Commission and Town Board upon its

finding that these are necessary to fulfill the purpose and intent of this ordinance.

- (ix) No use is hereby authorized unless the use is conducted in a lawful, orderly and peaceful manner. Nothing in a Conditional Use order shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption, or exception to any law, ordinance, order or rule of the Town Board, County of Waukesha, State of Wisconsin, or the United States of America, or other duly constituted authority. A Conditional Use order does not constitute a building permit, nor shall a Conditional Use order constitute any other license or permit required by Town Ordinance or law.
 - b. Compliance with all other provisions of this ordinance, such as lot width and area, yards, height, parking, loading, traffic, and highway access shall be required of all conditional uses unless otherwise specifically authorized to be modified by this Code. Variances shall only be granted as provided in Sec. 42-47 of this ordinance.
 - c. Changes in use subsequent to the initial issuance of a conditional use permit shall result in a need to change the initial conditions and shall require an amendment to the conditional use permit. If any holder of a conditional use permit wishes to extend or alter the terms of such permit, the permit holder must apply for an amendment to the conditional use permit through the procedure of application for conditional use permits detailed herein. The process for amending a permit shall generally follow the procedures for granting a permit as set forth in this Section, and shall require the filing of an application and a hearing as provided above. The Conditional Use Order may describe changes that can be made without requiring a new permit.
- (7) *Expiration of conditional use status.* Conditional use status will terminate when, after public hearing, the Town Board, after receiving a recommendation from the Plan Commission or upon the passing of 60 days from the public hearing, whichever occurs first, determines any of the following:
- a. The conditional use has not continued in conformity with the conditions of the permit.
 - b. A change in the character of the surrounding area or in the conditional use itself causes such use to be no longer compatible with surrounding uses.
 - c. The conditional use has been discontinued for a period of 12 consecutive or 18 cumulative months in a three-year period. A business of a seasonal nature shall not be deemed discontinued during periods in which it is normally inactive (i.e., summer camps, snowmobile courses, ski areas, marinas, quarries, etc.)
- Upon such determination, the owner of the premises shall be required to bring all such land and buildings into conformity with the district regulations of the district in which such former conditional use is located, and all other provisions of this chapter, within 90 days from such determination.

(8) *Conditional uses permitted.* Subject to the foregoing, the following may be permitted as conditional uses where specified within the zoning districts:

- a. Commercial and residential ponds, fish or bait ponds, hatcheries, recreational ponds, ditching, draining, grading, dredging, topsoil and sod removal and channel improvement, but not including normal road and home construction or agricultural ditching and draining as may be excepted by Wis. Stats. ch. 30.
- b. Commercial kennels and laboratories using animals or animal products.
- c. Commercial vehicle operation and parking.
- d. In-law units.
- e. Multifamily unit.
- f. Residential planned unit developments.
- g. Senior housing.
- h. Event venues.
- i. Wireless telecommunications mobile service facilities.

[Detailed description of conditional uses.]

1. Commercial and residential ponds, fish or bait ponds, hatcheries, recreational ponds, ditching, draining, grading, dredging, topsoil and sod removal and channel improvement, but not including normal road and home construction or agricultural ditching and draining as may be excepted by Wis. Stats. ch. 30—subject to the following:
 - (i) The location, site plan and plan of operations shall be submitted to and approved by the town plan commission and board. No such use shall create flooding, concentrated runoff, inadequate drainage, unfavorable topography or restrict navigation in navigable waters.
 - (ii) No such use shall be permitted on a parcel less than five acres in area.
 - (iii) No building other than one used only for residence purposes shall be closer than 50 feet to the lot line of an adjoining lot in a district permitting residential use.
 - (iv) Note: County shoreland and floodland protection ordinance provisions may also have jurisdiction and it is suggested that where such projects are proposed which may be within the jurisdiction of the county, that said project be referred to the county for review prior to the petitioner proceeding ahead so a joint conditional use request may go forward with the town and county.
 - (v) Proposed ponds which are not to be located within the jurisdiction of the county shoreland and floodland protection ordinance shall not require county approval. Applicant shall proceed with the conditional use request with the town.

2. Commercial kennels and laboratories using animals or animal products—subject to the following:
 - (i) The location, building and site plans and plan of operations shall be submitted for approval following section 42-30.
 - (ii) No such use shall be permitted on a lot less than five acres in area.
 - (iii) No building shall be closer than 50 feet to any lot line.
 - (iv) Off-street parking shall be provided as required for office buildings and customer service establishments.
 - (v) The number of dogs for commercial kennels shall be one dog per acre with a maximum of 20 dogs total.
 - (vi) All animals shall be restricted by a fence or other approved barrier to keep the animals a minimum of 20 feet from any lot line.
 - (vii) Animal feces shall be picked up and disposed of on a weekly basis, or more often, to prevent odors from causing a nuisance to surrounding properties as determined by the plan commission and town board.
 - (viii) The issuance of the use permit is subject to the town finding that such use permit will not adversely affect the use of adjacent lands and is compatible with surrounding and nearby land uses.
 - (x) The town may deny the request for such use permit on the basis of a finding that such use would be incompatible with surrounding and nearby land uses, a possible nuisance and/or not in the public interest.
3. Commercial vehicle operation and parking in agricultural and residential districts—subject to the following conditions:
 - (i) The parking of a commercial vehicle may be allowed as long as the vehicle is owned or leased and operated by the owner or occupant of the premises. No such use shall be allowed on any parcel except as may front or abut directly upon an arterial street or collector street. No such activity shall be allowed in an existing or proposed residential subdivision unless such lot directly abuts or fronts on an arterial street or collector street.
 - (ii) No more than one commercial vehicle shall be allowed to be parked on the premises. Such vehicle shall be fully operative and in active use.
 - (iii) No such vehicle shall be allowed to be parked or stored closer than 50 feet to any adjacent lot line, and not closer than 100 feet from the base setback line. In the case of refrigerator trucks, the refrigeration unit may not be operated in the open if said truck is parked closer than 500 feet to the nearest neighboring residential structure.
 - (iv) In determining whether or not the proposed conditional use permit should be issued, a determination of compatibility with adjacent land uses shall be made by the town board, upon receipt of a recommendation from the town plan commission. If it is determined that it would in any way be incompatible and

represents an adverse effect or nuisance to adjacent land uses, the conditional use permit shall not be issued.

- (v) The conditional use permit shall be reviewed as determined by the town in order to determine conformance with the terms of the permit and if it is determined that the use is no longer compatible with adjacent land uses as they develop in the vicinity, the conditional use permit may be revoked in accordance with the revocation procedures contained in this chapter.
- (v) A conditional use permit is not required if the commercial vehicle is parked within a completely enclosed accessory building on the premises. Commercial vehicles parked in residential districts shall comply with Sec. 42-39(b).

4. In-law unit—subject to the following:

- (i) The location, building plan, site plan and plan of operation shall be submitted for approval per section 42-30. Prior to scheduling a public hearing, the town plan commission shall review the specific proposal.
- (ii) The county environmental resources department shall certify that the septic system will accommodate the proposed use in accordance with all federal, state, county and local sanitary codes, including COMM 83.
- (iii) Maximum living area per in-law unit shall not exceed 1000 square feet and shall contain no more than two bedrooms. There shall be an additional parking space for the in-law unit. There shall be no more than one in-law unit per single-family lot.
- (iv) Architecture of the residence shall be compatible with the adjacent residential neighborhood and shall appear to be a single-family residence. All other appropriate zoning district requirements for the principal living unit shall be complied with.
- (v) The town plan commission shall determine if it is appropriate to have an interior door between the living units if the units are contiguous, but it is not required that the living units be contiguous.
- (vi) A deed restriction shall be filed in the county register of deeds office and a copy of the recorded document presented to the building inspector prior to issuance of the building permit. This deed restriction shall state that the in-law unit is to be occupied by not more than two persons related by blood or marriage to the family occupying the principal unit and the conditional use is not transferable without formal approval of the town plan commission and town board.
- (vii) Both units of the structure must have smoke alarms installed and in working order at the time the final occupancy permit is issued.

5. Multifamily unit—subject to the following conditions:

- (i) Location, building plans, site plan and plan of operation shall be submitted for approval per section 42-30.

- (ii) These units shall only be permitted on an arterial or collector street, as defined in the town land division ordinance, and not on an interior subdivision street within the town.
- (iii) No more than one two-unit structure on a lot may be considered when served by either a private onsite waste system and a private onsite well. All provisions of the underlying zoning district shall apply except for the following:
 - A. A two-unit structure (duplex) shall have a minimum floor area of 850 square feet per unit.
 - B. The minimum open space area as required by the underlying zoning district shall apply to each unit.
 - C. The maximum building footprint shall be 1½ times as required by the underlying zoning district.
 - D. The minimum lot area and the minimum average lot width shall be 1½ times as required by the underlying zoning district.
 - E. Each two-unit structure shall provide a minimum of a two-car attached garage with a minimum size of 440 square feet.
- (iv) More than one two-unit structure or more than two units per structure on a lot may be considered when served by both a municipal sewer system and municipal water system. All provisions of the underlying zoning district shall apply except for the following:
 - A. A two-unit structure (duplex) shall have a minimum floor area of 850 square feet per unit.
 - B. More than two-units per structure shall have a minimum floor area of 600 square feet for a one-bedroom unit, 700 square feet for a two-bedroom unit, and 800 square feet for a three-bedroom unit. An additional 100 square feet shall be required for each additional bedroom over a three-bedroom unit.
 - C. The density shall not exceed 15 dwelling units per acre if the parcel is contiguous to an incorporated municipality, and shall not exceed eight dwelling units per acre if not contiguous to an incorporated municipality.
 - D. The minimum open space required shall be 40 percent, and a maximum of 20 percent of any land zoned C-1 may be used in the calculation.
 - E. The maximum building footprint shall be two times as required by the underlying zoning district.
 - F. Structures with more than two residential units shall provide a minimum of one parking stall within an attached garage and a minimum of one surface parking stall. The location and arrangement of the garages are subject to approval by the town board upon recommendation of the town plan commission.

- (v) The method of waste disposal must be approved by the state and/or the county.

6. Residential planned unit developments—due to the increased urbanization and the associated greater demands for open space, it is herein provided that there be flexibility in the regulations governing the development of land. This provision is intended to encourage planned unit development in directions that recognize both the changes in design and technology in the building industry, and the new demands in the housing market. It is intended that these provisions create communities with open area. An overall development plan must be submitted to the town plan commission and town board for review and approval subject to the following:

- (i) There shall be no specific lot size, offset, setback, minimum open space per lot required within a planned unit development. Lot areas shall be determined and may be modified according to the following conditions:
- A. That all sanitary provisions are approved by the county health department.
 - B. That the proposed development is not contrary to the general welfare or economic balance of the community, and that benefits and amenities of the resultant development justify the variation from the normal requirements of the district in which it is located.
 - C. That all other requirements of the planned unit development are met as set forth herein.
- (ii) Residential planned unit development.
- A. The following table shall be utilized as a minimum to compute the maximum dwelling unit density and minimum common open space requirements for the planned unit development:

Minimum Common Open Space and Density					
Density	Districts	Common Open Space			
		20%	30%	40%	50%
	A-1	120,000	116,000	113,000	110,000
	R-E	120,000	116,000	113,000	110,000
	R-SE	85,000	82,000	80,000	78,000
	R-1	43,000	41,000	40,000	39,000
	R-2	30,000	29,000	28,000	27,000
	R-3	20,000	19,000	18,000	17,000

Example—computing maximum dwelling unit density in a planned unit development with 20 percent common open space in an R-1 District:

Gross acreage—100 acres

Less 80 percent of ten acres zoned C-1—eight acres

Total residential acreage in square feet (82 acres x 43,560) 3,571,920
square feet divided by square feet/dwelling unit requirements for R-1
Residential District (3,571,920÷43,000) equals 83 units

- B. The common open space of the development shall be clearly delineated within the development as an outlot or easement and shall not include open space within a developable lot. Up to 20 percent of the land in the proposed development currently zoned C-1 may be used in this open space computation.
 - C. Adequate guarantee shall be provided for permanent retention of common open space resulting from these regulations, either by private reservation, or by public dedication. Buildings or uses for non-commercial, recreational, or accessory facilities may be permitted in such common open space area with the approval of the town plan commission and town board. When used in the A-1 Agricultural District, the permanency of open areas when set aside as farm fields may be subject to review and change at a future time when it is no longer desirable to retain an agricultural or rural atmosphere due to increased needs and demands for space for additional development as determined by the town board. Appropriate measures may be established in open space easements granted to the town allowing the conversion of said fields to provide for additional density and development consistent with the reasonable intent of this chapter and consistent with the density of the development on surrounding lands.
 - D. Perpetual care and maintenance of such open space areas shall be provided for and an operational plan shall be submitted for approval to the town plan commission and town board.
 - E. Ownership and tax liability of the open space areas shall be established in a manner acceptable to the town and made a part of the conditions of approval.
- (iii) After all conditions of a planned unit development project are certified by the town board and plan commission as being completed, the conditional use status of such completed development shall be changed to a permitted use in the district in which it is located.
7. Senior housing. The term "senior housing" refers to a dwelling unit designed and constructed to be occupied by senior persons. A senior person is a person who is 55 years of age or older on the date such person intends to occupy the premises, or one's spouse who is a senior person as defined herein. Guests are allowed to stay no more than 30 days in any calendar year.

- (i) The appropriateness of a particular site for senior housing as a conditional use shall be decided at the discretion of the plan commission and town board following the criteria herein.
- (ii) Senior housing is a conditional use in the R-3 Residential District and a permitted use in the B-1, B-2 and B-3 Business Districts subject to the following conditions:
 - A. Building plans, site plans, landscaping plans and plan of operation shall be submitted for approval per section 42-30. Prior to the public hearing being held, the petitioner shall review the proposal with the plan commission. Such facilities shall be located in close proximity to retail shopping including grocery stores, pharmacy, banking and restaurants or transportation services such as municipal bus, taxi, van/bus shuttle service, etc., shall be available on site or along the street directly abutting the lot.
 - B. The primary entrance shall be located on an arterial or collector street with sidewalks. Such facilities shall be served by municipal sewer. Municipal water, if available, shall be used to serve the facilities. If a private well or water system will be utilized, a municipal size/capacity water supply system is required to meet the needs of the facility pursuant to the state plumbing code.
 - C. No such use shall be permitted on a lot less than two acres in area.
 - D. A minimum of 30 percent of the site's area shall be retained as green space. There shall be at least one area of continuous green space that provides for outside walking area and sitting area with a minimum width of 20 feet and a minimum size of 10,000 square feet.
 - E. Offsets and setbacks shall conform to the minimum dimensions required in the zoning district in which it is located with a minimum offset of 20 feet. The building height maximum is 35 feet.
 - F. Minimum living areas shall apply as follows: 650 square feet for a one bedroom unit, 850 square feet for a two bedroom unit or greater. Efficiency units shall not be permitted. Laundry facilities shall be provided on each floor of the building. A common use room is required for the residents.
 - G. Underground or aboveground garage parking shall be provided for at least two-thirds of the units. A minimum parking ratio of 1.05 parking spaces per unit shall be provided.
 - H. Density shall be no more than 20 units per acre.
 - I. The 55 year age restriction shall not apply to one unit that is occupied by the owner, manager or operator of the building with one or more family members of such owner, manager or operator, if any of such persons that are regularly engaged in the performance of substantial duties is directly related to the management or maintenance of the building.

8. Event venue. An event venue is a location (i.e., premise, lot, building, and/or structure) which is rented to third parties for events (i.e., weddings, fundraisers, meetings/conferences, birthday celebrations, and/or anniversaries). Food shall be prepared and served by a professional catering service. Beverages will be sold/served by the owner/operator of the venue or a professional catering service. An event shall not exceed 300 guests. Only one event may take place at one time. The assembly of temporary tents, canvas, plastic, etc., is prohibited. Event venues are subject to the following:
- (i) The location, building, and site plan and plan of operation shall be submitted for approval per section 42-30.
 - (ii) No such use shall be permitted on a lot less than 20 acres in area.
 - (iii) No such use shall be allowed on any parcel except as may front or abut directly upon an arterial or collector street and the event venue access to the parcel shall be from the arterial or collector street.
 - (iv) No such use shall be permitted unless served by a private onsite waste system and a private on-site well, a municipal sewer system and municipal water system, or a combination of a private system and municipal system.
 - (v) No building, structure and/or use shall be closer than 100 feet to the lot line of an adjoining lot in a district permitting a residential use.
 - (vi) Off-street parking shall be provided in accordance with section 42-39.
 - (vii) Live/amplified music shall not exceed 75 decibels at the property line. The town plan commission and board may prohibit music being piped, amplified or permitted outside of a building and/or structure if the noise level becomes an issue. The term "event venue" does not apply to private clubs, private commercial recreational facilities, theaters, dance halls and other amusement places, and restaurants.
9. Wireless telecommunications mobile service facilities.
- (i) Purpose. This section is intended to regulate mobile service facilities to the full extent allowed by Wisconsin Statutes Section 66.0404 and other applicable laws. Nothing herein is intended to regulate or to authorize the regulation of mobile service facilities in a manner that is preempted or prohibited by Wisconsin Statutes Section 66.0404 or other applicable laws.
 - (ii) Definitions. All terms used herein shall have the meaning described in Wisconsin Statutes Section 66.0404(1).
 - (iii) New Towers and Facilities. The siting and construction of a new mobile service support structure and facilities shall be subject to the following requirements:
 - A. Application Process. The Applicant shall submit a written application which shall include all of the following information:
 - a) The name and business address of, and the contact individual for, the Applicant.

- b) The location of the proposed tower.
 - c) The location of the mobile service facility.
 - d) A construction plan which describes the tower, equipment, network components, antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new tower.
 - e) An explanation as to why the Applicant chose the proposed location, and why the Applicant did not choose collocation, including a sworn statement from the responsible party attesting that collocation within the Applicant's service area would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome.
- B. Determination of Completeness within 10 Days of Submittal. The Town of Waukesha Clerk or the Town of Waukesha Clerk's designee shall review the application and determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Town of Waukesha Clerk or the Town of Waukesha Clerk's designee shall notify the Applicant in writing within ten days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their applications as often as necessary until it is complete.
- C. Conditional Use Review Procedure. The wireless telecommunications mobile service facility shall be a conditional use; however, it is not subject to the procedures of Section 42-35 (1) and (2) of this code, and instead shall be reviewed pursuant to the following procedures:
- a) Plan Commission. Within a reasonable time after an application and all required information has been filed, the matter shall be referred to the Town of Waukesha Plan Commission for its review and recommendation to the Town of Waukesha Board. The Plan Commission may choose to attend the public hearing, described below, jointly with the Town of Waukesha Board, prior to making its recommendation.
 - b) Public Hearing. Upon class 2 notice, a public hearing shall be held by the Town of Waukesha Board in accordance with §§62.23(7)(d) and (de), Wisconsin Statutes and in addition mailed notice shall be attempted to all owners of property located within 100 feet of the property lines of the proposed location at least 5 days before the public hearing.
 - c) Fee. Any application shall be accompanied by a fee as set from time-to-time by the Town of Waukesha Board to defray the cost of notification and holding of public hearing. Costs incurred by the Town of Waukesha in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use

and preparation of the conditions to be improved shall be charged to the Applicant. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).

d) Requirements.

- i. Conditional use status shall not be granted to communication towers unless the tower is located so that there is sufficient radius of clear land around the tower so that its collapse shall be completely contained on the property, subject to the following. Except as provided in Subsection iv. below, if an applicant provides the Town of Waukesha with engineering certification showing that the tower is designed to collapse within a smaller area than the radius equal to the height of the tower, the smaller area shall be used unless the Town of Waukesha has and provides to the Applicant substantial evidence that the engineering certification is flawed.
- ii. All facilities shall meet all State and federal codes.
- iii. Adverse impact. The proposed wireless communications towers, antennas, and associated accessory structures and facilities use will not have a substantial or undue adverse or detrimental effect upon or endanger adjacent property, the character of the area, or the public health, safety, morals, comfort, and general welfare and will not substantially diminish and impair property values within the community or neighborhood and:
 - 1) Interference with surrounding development. Will be constructed, arranged, and operated so as not to unreasonably interfere with the use and development of neighboring property according to the applicable zoning district regulations.
 - 2) Adequate public facilities. Will be served adequately by any required essential public facilities and services.
 - 3) Traffic congestion. Will not cause undue traffic congestion nor draw significant amounts of traffic through residential streets. Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets.
 - 4) Destruction of significant features. Will not result in the destruction, loss, or damage of any points of visual interest, including views of waterways, open spaces, historic buildings or historic landscapes or architecturally significant structures, or other scenic views or natural, scenic, or historic feature of significant importance.
 - 5) Hazard protection. Will reasonably protect persons and property from erosion, flooding, fire, noise, glare, falling debris or ice, or similar hazards.

- 6) Compliance with State of Wisconsin Statutes and the Wisconsin Administrative Code. The proposed facilities shall be in compliance with all applicable State of Wisconsin Statutes and Wisconsin Administrative Code provisions and requirements.
- iv. Any tower that is constructed on or adjacent to a parcel of land on which single-family residential use is permitted shall be setback from every lot line of a parcel for which single-family residential use is permitted by a distance that equals or exceeds the height of the tower.
- e) Aesthetic Requirements. All wireless telecommunications facilities shall comply with the following aesthetic standards:
 - i. In areas where facilities are currently nonexistent or underground, undergrounding is required.
 - ii. No new above ground structures, including co-locations on existing structures, shall be placed within 500 feet of historic structures or historic districts designated by the National Register of Historic Places in Wisconsin or listed on the State Register of Historic Places. The 500-foot separation is waived for installations that are completely concealed from view, or are not visible from locations where the historic structure can be observed.
 - iii. Attachments to existing structures shall be designed to be flush with the existing structure as much as can reasonably be done, shall be a color that matches the existing structure and shall be the smallest size possible to reasonably accommodate the intended purpose. If the structure to which the attachment is made changes color due to repainting, resurfacing or other means, the attachment shall be modified to match the new color.
 - iv. Any party objecting to the requirements of this Subsection e. shall have an opportunity to demonstrate that the requirement constitutes an effective prohibition in violation of State or federal law, upon application to the Town of Waukesha Board, and the Town of Waukesha Board shall waive the requirement if it finds the standard to effectively prohibit the expansion of wireless technology in the Town of Waukesha or otherwise violates State or federal law.
- f) Determination. The Town of Waukesha Board shall make a decision on the application within a reasonable time after the public hearing, provided further that final action shall be taken within 90 days of receipt of a complete application unless the time extended by the Applicant. Said decision shall be stated in writing and a copy made a permanent part of the Town of Waukesha records. If conditional use status is not granted, the reasons therefor will be included in such record.

- g) **Changes or Additions.** Subsequent change or addition to the approved plans or use shall first be submitted to the Plan Commission for recommendation to the Town of Waukesha Board, and then to the Town of Waukesha Board for action. If in the opinion of the Town of Waukesha Board, such change or addition constitutes a substantial alteration, a public hearing shall be held before the Town of Waukesha Board shall be required and notice thereof be given pursuant to this Chapter.
- h) **Conditions.** Conditions such as landscaping, architectural design, type of construction, floodproofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements, among other issues as deemed appropriate may be required by the Town of Waukesha Board upon its finding that these are necessary to fulfill the purpose and intent of this Chapter; subject to the limitations of Section D, below. Particular conditions may include the following:
- i. **Interference with air traffic prohibited.** The proposed antenna or antenna structure shall not result in restriction or interference with air traffic or air travel to or from any existing or proposed airport and must meet the applicable Federal Aviation Administration (FAA) regulations.
 - ii. **Interference with radio or television reception and/or any other form of wireless communication prohibited.** The proposed tower, alternative tower structure and/or antenna(s) shall not result in interference with radio and/or television reception and/or any other form of wireless communication in nearby residential or nonresidential areas based upon the applicable Federal Communications Commission (FCC) regulations. In the event that any complaints of interference are received and they are reasonably suspected by the Town of Waukesha to be caused by the tower, alternative tower structure and/or antenna (s), the Town of Waukesha shall notify the Applicant and property owner. The Applicant shall have a period of 30 days following receipt of said notification to investigate said complaints and respond to the Town of Waukesha. In the event that it is determined that the tower, alternative tower structure and/or antenna(s) is the source of interference, the Applicant shall have 10 days to correct all problems.
 - iii. **Access.** The use shall be located along and have direct vehicular access to a public street. Access to and from the site shall be in accord with the requirements of the applicable highway or arterial street access authority, including the Wisconsin Department of Transportation, Waukesha County and/or the Town of Waukesha.

- iv. Limitation on use of drives or required off-street parking spaces. No wireless communications towers, antennas, and associated accessory structures and facilities shall occupy any drive and/or off-street parking space which is required by this chapter for the principal use of the property.
- v. Blocking of ingress/egress routes prohibited. No wireless communications towers, antennas, and associated accessory structures and facilities shall block any permanent vehicular and/or pedestrian ingress and egress route or access aisle or drive (including entrances and/or exits to a site or building).
- vi. Visibility and safety. The location of wireless communications towers, antennas, and associated accessory structures and facilities on the property shall not block visibility for vehicles or pedestrians on or off the lot in a way that would create a safety hazard.
- vii. All new towers to be of a monopole or special design unless otherwise determined by the Town of Waukesha Board. Unless otherwise determined by the Town of Waukesha Board as provided herein, all new wireless communications towers shall be of a monopole tower design and shall not exceed a width or diameter of five feet in diameter as measured at its base. However, the Town of Waukesha Board shall have authority to require a special design of new wireless communications towers where findings of particular sensitivity are made, such as proximity to historic or aesthetically significant structures, views and/or community features or other factors as determined by the Town of Waukesha Board.
- viii. Wireless communications towers, antennas, and associated accessory structures to be structurally self-supporting. All wireless communications towers, antennas, and associated accessory structures and facilities shall be structurally self-supporting without the use of guy wires and shall be specified or plan approved by a structural professional engineer licensed in the State of Wisconsin. All wireless communications towers, antennas, and associated accessory structures and facilities shall be permanently anchored to the ground.
- ix. Minimum of four service providers to be allowed to use tower facilities. Unless specifically waived by the Town of Waukesha, new towers shall be designed to accommodate at least three other wireless communication service providers at market rate. The Applicant shall allow the sharing of the antenna support facilities with three or more other service providers through the use of a collocation agreement. The holder of a conditional use permit for an antenna support facility shall not make access to the antenna support facility and site economically unfeasible. If additional users

demonstrate (through an independent arbitrator or other pertinent means) that the holder of a conditional use permit for an antenna support facility and site has made access to such antenna support facility and site economically unfeasible, then the conditional use permit for said facility shall become null and void. All towers and structures shall be designed structurally, electrically, and in all respects to:

- 1) Accommodate both the Applicant's antennas and comparable antennas.
 - 2) Allow for the future rearrangement of antennas upon the commercial communication tower or structure.
 - 3) Accept antennas mounted at varying heights, provided that said heights do not exceed the maximum height approved or the height of the approved commercial communication tower or existing structure.
- x. Buildings, enclosures, equipment and associated devices. All buildings, enclosures, equipment, and other associated devices ancillary to wireless communications towers and antennas shall be placed in close proximity to the base of the tower located on the wireless communications site. If the wireless communications facility does not have a tower, the buildings, equipment, and other associated devices shall be placed in close proximity to the alternative tower structure. If the wireless communications facility has a roof-mounted antenna support structure, an equipment enclosure may be located on the roof, provided that such enclosure is placed as unobtrusively as possible and in compliance with all applicable building codes and this chapter.
- 1) All buildings, enclosures, equipment, and other associated devices shall be kept locked at all times.
 - 2) Each building, enclosure, equipment, and other associated device shall have a label attached to it. The label shall give the name, address, and telephone number of the person who should be contacted in the event of an emergency.
 - 3) The aggregate floor area of all buildings and enclosures shall not exceed 500 square feet per tower.
 - 4) The total height of the structures shall not exceed 15 feet in height, and the construction materials shall consist of a brick exterior on all sides of the structures.
 - 5) Backup electrical power generators, if provided, shall only be operated during electrical power outages and for testing and maintenance purposes. If the electrical power generator is located within 100 feet of a residential zoning district boundary

line, noise attenuation measures shall be included to reduce noise levels to an exterior noise level of not greater than 45 Ldn at the property line. Testing and maintenance of said electrical power generators shall only take place on weekdays between the hours of 9:00 a.m. and 5:00 p.m.

- 6) An "RF Safety Hazard" sign per ANSI Standard C95.2-1982, including descriptive wording or warning information at the user's option, shall be located on the tower and facilities where appropriate to create an awareness of a possible RF exposure to personnel. Sign lettering is recommended to conform to ANSI Z35.1-1972m while the yellow triangle shall conform to ANSI Z53.1-1979. ANSI Z35.1-1972 details construction guidance in the selection of finishes, illumination and placement.
- xii. Anticlimbing measures required. Towers shall be designed to prevent children and trespassers from climbing on those structures. Sufficient anticlimbing measures shall be incorporated into the facility to reduce the potential for trespass and injury. Ladder rungs on towers shall be placed a minimum of 20 feet above the ground.
- xiii. Advertising and signage. No form of advertising or signage (other than warning or equipment information signage) shall be allowed on the wireless communications towers, antennas, and associated accessory structures and facilities. All signage shall be according to the sign regulations set forth in the Town of Waukesha sign regulations. In addition, the following signs are hereby prohibited:
 - 1) Any sign which, or any part of which, is in motion by any means, including fluttering or rotating, or other signs set in motion by movement of the atmosphere. This includes all flags (except that of the United States of America, State of Wisconsin, and Town of Waukesha), pennants, whirling objects, banners, or other entities attached to strings or lines.
 - 2) Inflatable advertising devices or signs.
 - 3) Changeable copy and portable trailer signs, either fixed or moveable.
 - 4) Banners which are temporary signs or devices of paper, fabric, plastic, or other flexible materials and are suspended by wires or poles to advertise a special event (except as may be permitted by the Town of Waukesha Board).
 - 5) Statues and stuffed animals.
- xiii. Cable installation. All cable to and from the antenna and/or antenna structure shall be installed underground unless the antenna is mounted on a building where cable will go directly into the structure. Above ground cable installation may be allowed if it is

adequately screened from view from outside the fenced area as determined by the Town of Waukesha Board upon receipt of a recommendation from the Plan Commission.

- xiv. Security and fencing. The base of the tower and its associated accessory structures shall be enclosed and fenced by a security fence not less than six feet in height and secured so that it is not accessible by the general public. Fence design, materials, and colors shall reflect the character of the surrounding area as determined by the Town of Waukesha Board upon receipt of a recommendation from the Plan Commission. Electrical fencing is prohibited. All fencing shall meet the applicable fence requirements of the Town of Waukesha Code.
- xv. Landscaped buffer yard required. A buffer yard of plant materials of sufficient maturity and size (as determined by the Town of Waukesha Board) to immediately and effectively screen the equipment cabinets, structures, or buildings from public view and from adjacent properties shall be provided.
 - 1) The minimum buffer yard shall consist of a landscaped strip at least 10 feet in width outside the entire perimeter of the wireless communications facility.
 - 2) In locations where the visual impact of the tower would be minimal (as determined by the Town of Waukesha Board), the landscaping requirement may be reduced or waived with the approval of the Town of Waukesha Board.
 - 3) Existing mature tree growth and natural land forms shall be preserved to the maximum extent possible. In some cases, when such towers are sited on large, wooded lots, natural growth around the property perimeter may be a sufficient buffer yard.
 - 4) All landscaping requirements detailed here shall be properly maintained in perpetuity.
 - 5) The minimum size of plant materials used in the required buffer yard shall be as indicated below:

Plant Material Type	Minimum Plant Material Sizes
Canopy trees	
Single stem	3-inch caliper
Multistem clump	12 feet tall
Coniferous trees	8 feet tall
Understory trees	2-inch caliper
Shrubs 3 feet tall	

- xvi. **Lighting.** No tower, antenna support structure, or antenna shall be artificially illuminated unless required by the Federal Aviation Administration or other applicable authority. This subsection does not prohibit the use of motion detectors and associated lighting for security nor the use of full cutoff luminaire design outdoor lights when the wireless communication provider's personnel are present. This subsection is not intended to prohibit any lighting required by any local, state, or federal law, rule, or regulation. If lighting is required by such law, rule, or regulation, the operator and owner shall choose the lighting which causes the least disturbance to the occupants of the adjacent properties.
- xvii. **Color and finish.** All towers and antennas shall be of a color that best allows them to blend into the surroundings so as to reduce visual obtrusiveness or to camouflage the tower and antennas. The use of grays, blues, and greens may be appropriate; however, each case shall be evaluated by the Town of Waukesha on an individual basis. All finishes shall be nonreflective.
- xviii. **No outdoor storage permitted.** There shall be no outdoor storage of any vehicles, equipment, or other goods permitted in conjunction with wireless communications towers, antennas, and associated accessory structures and facilities. This subsection does not apply to overnight storage of vehicles or equipment necessary for the construction or repair of the wireless communications tower, antennas, and associated accessory structures and facilities.
- xix. **Hazardous materials.** There shall be no use of, generation of, storage of, or disposal of any hazardous materials on, under, about, or within the land in violation of any law or regulation in conjunction with wireless communications towers, antennas, and associated accessory structures and facilities.
- xx. **Maintenance.** All wireless communications towers, antennas, and associated accessory structures and facilities shall be maintained in a clean, rust-free, sanitary, and safe manner and kept free from trash, refuse, and debris. In addition, all wireless communications

towers, antennas, and associated accessory structures and facilities shall be maintained in accordance with all applicable local, state, and federal regulations. If the Zoning Administrator concludes that a wireless communications tower, antenna(s), and associated accessory structure(s) and facility(s) fail to comply with such codes and regulations and constitute a danger to persons or property in the vicinity, the Town of Waukesha Zoning Administrator shall notify the owner or operator of the wireless communications tower, antenna(s), and associated accessory structure(s) and facility(s) of such fact. The notice shall be in writing and shall require the owner or operator to bring the facility into compliance with such codes and regulations within a time frame set forth by the Town of Waukesha Zoning Administrator but not to exceed 30 days of the date of service of the notice whichever is earlier. If the owner or operator fails to bring the wireless communications tower, antenna(s), and associated accessory structure(s) and facility(s) into compliance within the time provided, the Town of Waukesha Zoning Administrator may order the wireless communications tower, antenna(s), and associated accessory structure(s) and facility(s) to be removed to the extent necessary to protect persons or property in the vicinity. The cost of removing the wireless communications tower, antenna(s), and associated accessory structure(s) and facility(s) shall be at the owner's expense.

- xxi. Antennas on existing towers. The attachment of a new antenna on an existing tower may be allowed to minimize adverse visual impacts associated with the proliferation and clustering of towers.
- xxii. Electrical wiring. Electrical wiring shall be installed by a licensed electrical contractor and approved by the Town of Waukesha Electrical Inspector.
- xxiii. Financial guaranty and agreement for abandoned facilities removal and site restoration required. An Applicant shall provide to the Town of Waukesha, as a condition of issuance of a conditional use permit for wireless communications towers, antennas, and associated accessory structures and facilities, an irrevocable letter of credit or cash in the amount of \$20,000 to guaranty facilities removal and site restoration if the wireless communications towers, antennas, and associated accessory structures and facilities are abandoned or no longer used. The property owner shall also sign, as a condition of issuance of a conditional use permit, an agreement and record (with the Waukesha County Register of Deeds) a deed restriction to remove the wireless communications tower, antenna(s), and associated accessory structure(s) and/or facility(s) within six months of the discontinuance of its use.

- xxiv. Certificate(s) of insurance required. No use shall be permitted until the Applicant has placed on file with the Zoning Administrator a certificate or certificates of insurance indicating that there is in effect general public liability insurance covering any damages arising out of the use or operation of any devices and facilities operated in connection with such wireless communications towers, antennas, and associated accessory structures and facilities. Such insurance shall be in the minimal amount of \$2,000,000 per person, \$2,000,000 for each accident and \$6,000,000 property damage. Said certificate or certificates of insurance shall be furnished the Zoning Administrator annually.
 - xxv. Indemnification. The owner and operator agree to indemnify, defend, and hold harmless the Town of Waukesha and its elected officials, officers, employees, agents, departments, agencies, committees, boards, and representatives from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney fees and other costs and expenses of litigation, which may be asserted against or incurred by the Town of Waukesha or for which the Town of Waukesha may be held liable, which arise from the negligence, willful misconduct, or other fault of the owner and operator or their employees, agents, or subcontractors from the installation, operation, use, maintenance, repair, removal, or presence of such wireless communications towers, antennas, and associated accessory structures and facilities on any property.
 - xxvi. Debris. Any debris arising from the permittee's use, whether arising from construction or at any time thereafter, must be promptly removed by the permittee. Debris remaining for more than five (5) business days constitutes a violation of this Ordinance subject to the violations and penalties provisions of Sections 17.42 and 25.04 of this Code. Each day that the debris remains after such time constitutes a separate offense.
 - xxvii. No Assignment. The respective rights and obligations granted to the Applicant shall not be assigned to any other person or entity without the express written consent of the Town of Waukesha, except to any entity which controls, is controlled by, or is under common control with the Applicant, or to any partner, or to any partnership which the Applicant is general partner.
- D. Limitations upon Authority. The Town of Waukesha review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Section 66.0404(4). In the event the Applicant believes the Town of Waukesha has exceeded its authority in this regard, the Applicant shall notify the Town of Waukesha, Board in writing and the Town of Waukesha Board

reserves the right to reconsider the matter, to ensure that applicable laws are followed.

- (iv) Modifications. The construction of modifications to an existing mobile service support structure or mobile service facility shall be subject to the following requirements:

A. Substantial Modification.

- a) Application and Review Process. The application and review process for a substantial modification is identical to the application and review process for a new tower, as described above, except that the required plans should describe the proposed modifications, rather than describe the new structure.

B. Not Substantial Modifications.

- a) Application Information. The Applicant shall submit a written application that describes the Applicant's basis for concluding that the modification is not substantial, and all of the following information:
- i. The name and business address of, and the contact individual for, the Applicant.
 - ii. The location of the affected support structure.
 - iii. The location of the proposed facility.
- b) Completeness Determination within Five Days. The Town of Waukesha, Clerk or Town of Waukesha, Clerk's designee will determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Town of Waukesha Clerk or Town of Waukesha Clerk's designee must notify the Applicant in writing within five (5) days of receiving the application if it is found not to be complete, specifying in detail the required information that was incomplete. The Applicant may resubmit as often as necessary until it is complete.
- c) Fee. Any application shall be accompanied by a fee as set from time-to-time by the Town of Waukesha Board to defray the cost of review. Costs incurred by the Town of Waukesha in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Applicant. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).
- d) Determination. The Town of Waukesha Board shall make a decision on the application within a reasonable time, provided further that final action shall be taken within 45 days of receipt of a complete application unless the time extended by the Applicant. Said decision shall be stated in writing and a copy made a permanent part of the Town of Waukesha

records. If approval is not granted, the reasons therefor will be included in such record.

- e) **Limitations Upon Authority.** The Town of Waukesha review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Section 66.0404(4) and 66.0414 as applicable, and such other laws as may apply which may include 47 USCA §1455. In the event the Applicant believes the Town of Waukesha has exceeded its authority in this regard, the Applicant shall notify the Town of Waukesha Town Board in writing and the Town of Waukesha Town Board reserves the right to reconsider the matter, to ensure that applicable laws are followed.

(9) *Continuation of Existing Conditional Permits.* Any conditional use permit granted pursuant to conditional use authority that has since been repealed and that was in effect, and the use was legally in operation on the date of such repeal, that is no longer an allowed use of the property, shall be allowed to continue as a conditional use subject to all conditions stated in the conditional use order. Any such conditional use permit that requires compliance with a section of the Town of Waukesha Zoning Code that has since been repealed, shall continue to require compliance with the referenced Code section as it existed immediately prior to such repeal and the repeal of such provision is stayed solely for such existing conditional use permit(s). These continuation provisions are intended to preserve the status quo for all rights and responsibilities incurred or accrued prior to the adoption of this ordinance. Nothing herein shall be interpreted to prevent existing conditional use permit holders from applying to amend their conditional use pursuant to all laws in effect at the time of the application, or as set forth in the conditional use permit including those amendments requiring a public hearing.

SECTION 2: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-44 entitled "Legal nonconformity," Subsection (8) entitled, "Conditional Use Status" is hereby repealed.

SECTION 3: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-83 entitled "A-1 Agriculture District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-83. - A-1 Agriculture District.

(b) *Use regulations.*

- (2) *Conditional uses.* Commercial and residential ponds, commercial kennels and laboratories, commercial vehicle operation and parking, in-law unit, residential planned unit developments, and wireless telecommunications mobile service facilities.

SECTION 4: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-84 entitled "RE Single-Family Residence Estate District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-84. - RE Single-Family Residence Estate District.

(b) *Use regulations.*

- (2) *Conditional uses.* Commercial and residential ponds, commercial vehicle operation and parking, in-law unit, residential planned unit developments, and wireless telecommunications mobile service facilities.

SECTION 5: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-85 entitled "R-SE Suburban Estate District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-85. - R-SE Suburban Estate District.

(b) *Use regulations.*

- (2) *Conditional uses.* Commercial and residential ponds, commercial vehicle operation and parking, in-law unit, residential planned unit developments, and wireless telecommunications mobile service facilities.

SECTION 6: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-86 entitled "R-1 Single-Family Residence District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-86. - R-1 Single-Family Residence District.

(b) *Use regulations.*

- (2) *Conditional uses.* Commercial and residential ponds, commercial vehicle operation and parking, in-law unit, residential planned unit developments, and wireless telecommunications mobile service facilities.

SECTION 7: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-87 entitled "R-2 Single-Family Residence District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-87. - R-2 Single-Family Residence District.

(b) *Use regulations.*

- (2) *Conditional uses.* Commercial and residential ponds, commercial vehicle operation and parking, in-law unit, residential planned unit developments, and wireless telecommunications mobile service facilities.

SECTION 8: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-88 entitled "R-3 Single-Family Residence District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-88. - R-3 Single-Family Residence District.

(b) *Use regulations.*

- (2) *Conditional uses.* Commercial and residential ponds, commercial vehicle operation and parking, in-law unit, multifamily unit, residential planned unit developments, senior housing and wireless telecommunications mobile service facilities.

SECTION 9: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-89 entitled "R-4 Single-Family Residence District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-89. - R-4 Single-Family Residence District.

(b) *Use regulations.*

- (2) *Conditional uses.* Commercial vehicle operation and parking, in-law unit, legal nonconforming uses, multifamily unit, or wireless telecommunications mobile service facilities.

SECTION 10: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-90 entitled "P-1 Park, Recreation and Public District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-90. - P-1 Park, Recreation and Public District.

(b) *Use regulations.*

- (2) *Conditional uses.* Commercial and residential ponds, and wireless telecommunications mobile service facilities.

SECTION 11: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-91 entitled "B-1 Restricted Business District," Subsection (b) entitled, "Use Regulations," is hereby repealed and re-created as follows.

Sec. 42-91. - B-1 Restricted Business District.

(b) *Use regulations.*

(1) *Permitted uses.*

- a. The following retail or customer service establishments, provided the location, building and site plan, and plan of operation have been submitted to and approved by the town plan commission and town board as being in keeping with the character of the surrounding area: Antique and craft shops, art shops, bookstores, day care facilities, financial institutions, florist shops, funeral homes, gift shops, grocery stores, insurance offices, interior decorator's offices, paint and wallpaper stores, photographic studios, professional offices or studios, retail

stores, real estate offices, utility company offices, and any similar use subject to the approval of the town.

- b. Residential uses accessory to an above permitted use.
- c. Garages for storage of vehicles used in conjunction with the operation of the business. Any outside storage in this district, even on a temporary basis, must be enclosed within a six-foot high fence built to serve as a vision screen.
- d. Senior housing. The term "senior housing" refers to a dwelling unit designed and constructed to be occupied by senior persons. A senior person is a person who is 55 years of age or older on the date such person intends to occupy the premises, or one's spouse who is a senior person as defined herein. Guests are allowed to stay no more than 30 days in any calendar year. Senior housing is subject to the following requirements:
 - 1. Building plans, site plans, landscaping plans and plan of operation shall be submitted for approval per section 42-30. Such facilities shall be located in close proximity to retail shopping including grocery stores, pharmacy, banking and restaurants or transportation services such as municipal bus, taxi, van/bus shuttle service, etc., shall be available on site or along the street directly abutting the lot.
 - 2. The primary entrance shall be located on an arterial or collector street with sidewalks. Such facilities shall be served by municipal sewer. Municipal water, if available, shall be used to serve the facilities. If a private well or water system will be utilized, a municipal size/capacity water supply system is required to meet the needs of the facility pursuant to the state plumbing code.
 - 3. No such use shall be permitted on a lot less than two acres in area.
 - 4. A minimum of 30 percent of the site's area shall be retained as green space. There shall be at least one area of continuous green space that provides for outside walking area and sitting area with a minimum width of 20 feet and a minimum size of 10,000 square feet.
 - 5. Offsets and setbacks shall conform to the minimum dimensions required in the zoning district in which it is located with a minimum offset of 20 feet. The building height maximum is 35 feet.
 - 6. Minimum living areas shall apply as follows: 650 square feet for a one bedroom unit, 850 square feet for a two bedroom unit or greater. Efficiency units shall not be permitted. Laundry facilities shall be provided on each floor of the building. A common use room is required for the residents.

7. Underground or aboveground garage parking shall be provided for at least two-thirds of the units. A minimum parking ratio of 1.05 parking spaces per unit shall be provided.

8. Density shall be no more than 20 units per acre.

9. The 55 year age restriction shall not apply to one unit that is occupied by the owner, manager or operator of the building with one or more family members of such owner, manager or operator, if any of such persons that are regularly engaged in the performance of substantial duties is directly related to the management or maintenance of the building.

(2) *Conditional uses.* Commercial and residential ponds, event venues, and wireless telecommunications mobile service facilities.

SECTION 12: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-91 entitled "B-1 Restricted Business District," Subsection (e) entitled, "Area Regulations," Subsection (2) entitled, "Lot Size" is hereby repealed and re-created as follows.

Area regulations.

(2) Lot size.

a. Minimum area: 20,000 square feet, except senior housing which requires a minimum area of two acres.

SECTION 13: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-92 entitled "B-2 Local Business District," Subsection (b) entitled, "Use Regulations," is hereby repealed and re-created as follows.

Sec. 42-92. - B-2 Local Business District.

(b) *Use regulations.*

(1) *Permitted uses.*

a. Any use permitted in the restricted business district.

b. Any of the following retail and customer service establishments: Animal hospitals or veterinarian clinics not including a commercial kennel, appliance stores, bakery shops, barber shops, bank or savings and loan offices, billiards and pool halls, bowling alleys, clinics, clothing or dry goods stores, confectionery stores, delicatessens, drug stores, furniture stores, fruit and vegetable markets, grocery or other food products stores, hardware stores, hobby shops, ice cream and candy stores, jewelry stores, liquor stores, meat and fish markets, music and radio stores, newsstands, notion or variety shops, pharmacies, optical stores, radio and television service and repair shops, private commercial recreational

facilities, restaurants, self-service and pick-up laundry and dry cleaning establishments, shoe stores, sporting goods and bait shops, supermarkets, tailor or dressmaker shops, tobacco shops, and any similar use subject to the approval of the town plan commission.

- c. Residential uses accessory to an above permitted use.
 - d. Garages for storage of vehicles used in conjunction with the operation of the business. Any outside storage in this district, even on a temporary basis, must be enclosed within a six-foot high fence built to serve as a vision screen.
- (3) *Conditional uses.* Commercial and residential ponds, commercial kennels and laboratories, event venues, and wireless telecommunications mobile service facilities.

SECTION 14: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-92 entitled "B-2 Local Business District," Subsection (c) entitled, "Building Location," Subsection (2) entitled, "Offset" is hereby repealed and re-created as follows.

(c) Building location.

(2) Offset.

- a. Buildings used solely for commercial purposes: ten feet minimum.
- b. Buildings used in part for accessory residence or senior housing purposes: 20 feet minimum.

SECTION 15: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-92 entitled "B-2 Local Business District," Subsection (e) entitled, "Area Regulations," Subsection (2) entitled, "Lot Size," Subsection a entitled, "Minimum Area" is hereby repealed and re-created as follows.

(e) Area regulations.

(2) Lot size.

- a. Minimum area: 20,000 square feet, except senior housing which requires a minimum area of two acres.

SECTION 16: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-93 entitled "B-3 General Business District," Subsection (b) entitled, "Use Regulations," is hereby repealed and re-created as follows.

Sec. 42-93. - B-3 General Business District.

(b) *Use regulations.*

(1) *Permitted uses.*

- a. Any use permitted in the local business district.
 - b. The following types of businesses, services and trades: Automobile sales rooms, automotive body repair, storage yards and garages for equipment, supplies or vehicles, but not including the storage of junked or wrecked automobiles or parts, bakeries, caterers, dairies, and bottling plants, dry cleaning and dyeing establishments, furniture stores, laundries, lockers and cold storage plants, pet shops, places of entertainment, printing and publishing houses, theaters, dance halls and other amusement places, used car lots, wholesalers and distributors, mini-warehouses and any similar use subject to the approval of the town plan commission.
 - c. Residential uses accessory to an above permitted use.
- (2) *Conditional uses.* Commercial and residential ponds, commercial kennels and laboratories, and wireless telecommunications mobile service facilities.

SECTION 17: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-93 entitled "B-3 General Business District," Subsection (c) entitled, "Building Location," Subsection (2) entitled, "Offset" is hereby repealed and re-created as follows.

- (c) Building location.
 - (2) Offset.
 - a. Buildings used solely for commercial purposes: ten feet minimum.
 - b. Buildings used in part for accessory residence or senior housing purposes: 20 feet minimum.

SECTION 18: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-93 entitled "B-3 General Business District," Subsection (e) entitled, "Area Regulations," Subsection (2) entitled, "Lot Size," Subsection a, entitled "Minimum Area" is hereby repealed and re-created as follows.

- (e) Area regulations.
 - (2) Lot size.
 - a. Minimum area: 20,000 square feet, except senior housing which requires a minimum area of two acres.

SECTION 19: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-94 entitled "I-1 Limited Industrial District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-94. - I-1 Limited Industrial District.

(b) *Use regulations.*

(2) *Conditional uses.* Commercial and residential ponds, commercial kennels and laboratories, and wireless telecommunications mobile service facilities.

SECTION 20: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article III entitled, "Zoning Districts," Section 42-95 entitled "I-2 General Industrial District," Subsection (b) entitled, "Use Regulations," Subsection (2) entitled, "Conditional Uses" is hereby repealed and re-created as follows.

Sec. 42-95. - I-2 General Industrial District.

(b) *Use regulations.*

(2) *Conditional uses.* Commercial and residential ponds, et al., and wireless telecommunications mobile service facilities.

SECTION 21: Chapter 42 of the Town of Waukesha Town Code entitled, "Zoning," Article I entitled, "Introduction," Section 42-4 entitled "Definitions," Subsection (b) entitled, "Specific Words and Phrases," the definition of "Day Care Facilities," is hereby created and inserted in alphabetical order as follows.

Day care facilities means State-Licensed Group Child Care Centers providing care for nine (9) or more children for less than 24 hours per day. This definition does not include licensed or unlicensed child care within a provider's residence that meet the requirements of a home occupation.

SECTION 22: CONTINUATION OF EXISTING PROVISIONS.

The provisions of this ordinance, to the extent that they are substantively the same as those of the ordinances in force immediately prior to the enactment of this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances. In addition, the adoption of this ordinance shall not affect any action, prosecution or proceeding brought for the enforcement of any right or liability established, accrued or incurred under any legislative provision prior to the effective date of this ordinance for the time that such provision was in effect, and the repeal of any such provisions is stayed pending the final resolution of such actions, including appeals.

SECTION 23: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions,

sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 24: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law, upon the approval of the Waukesha County Board as required by Wisconsin Statutes §60.62(3)(b).

Passed and approved this 9 day of January, 2020.

TOWN OF WAUKESHA

By: Brian Tom Fischer
Brian Fischer, Town Chairman 01/23/20

ATTEST:

Kathy Nickolaus
Kathy Nickolaus, Town Administrator/Clerk/Treasurer